

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

LARRY L. BARNARD
Carson Boxberger
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

MICHAEL H. MICHMERHUIZEN
TINA M. BELL
Fort Wayne, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

HALL ENTERPRISES, INC. d/b/a)	
SCHAUMBURG AUDI,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 02A03-0512-CV-578
)	
RONALD L. BAKER, M.D. and)	
DEANNE M. BAKER,)	
)	
Appellees-Plaintiffs.)	

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Thomas J. Felts, Judge
Cause No. 02C01-0407-MI-135

October 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Hall Enterprises, d/b/a Schaumburg Audi (“Schaumburg Audi”), appeals the trial court’s grant of summary judgment to Ronald L. Baker, M.D., and Deanne M. Baker (the “Bakers”) and the trial court’s denial of Schaumburg Audi’s motion for summary judgment. Schaumburg Audi raises three issues, which we consolidate and restate as:

- I. Whether the trial court erred when it determined that Indiana law applied to the litigation;
- II. Whether the trial court erred when it determined that the Bakers were entitled to title and possession of the automobile.

On cross-appeal, the Bakers raise one issue, which we restate as whether the trial court abused its discretion by denying the Bakers’ motion to file a supplemental complaint. We affirm.

The relevant facts designated by the parties follow. Fred Webb was involved, through Webb Auto Consulting and/or Mint Auto Sales (collectively, “Webb”), in the sale and lease of automobiles in Fort Wayne, Indiana. In May 2002, Dr. Baker sought to purchase a low mileage Audi vehicle and contacted Webb. The Bakers had previously purchased five vehicles from Webb.

Webb’s brother, Ryan Webb, located a vehicle for Dr. Baker at Schaumburg Audi, an automobile dealership in Illinois, and agreed on a purchase price of \$53,561.00. Fred Webb had previously acted as an auto broker facilitating transactions between customers and Schaumburg Audi. Ryan Webb sent Schaumburg Audi a check in the amount of \$53,561.00 drawn on the account of Webb Realty. After receiving the check, Schaumburg Audi delivered the vehicle to Indiana but retained the certificate of title

pending the check clearing the bank. The Bakers paid Webb the sum of \$61,642.30, and Webb delivered the vehicle to the Bakers. Webb told the Bakers that the certificate of title would be delivered shortly. However, the check to Schaumburg Audi from Webb Realty was returned for insufficient funds, and Schaumburg Audi did not transfer the certificate of title. Because they lack the certificate of title, the Bakers have been unable to register the vehicle with the Indiana Bureau of Motor Vehicles. In April 2004, Webb pleaded guilty to theft as a class D felony and was ordered to pay restitution to the Bakers.

In July 2004, the Bakers filed a verified petition for an order directing the BMV to issue a certificate of title. Schaumburg Audi filed an answer, affirmative defenses, and a counterclaim against the Bakers and alleged that it retained all rights, title, and interest in the vehicle. In the counterclaim, Schaumburg Audi alleged that the Bakers were knowingly and intentionally exerting unauthorized control over the vehicle and that it was entitled to treble damages, costs, and attorney fees for the conversion.

The Bakers filed a motion for summary judgment and, relying upon our decision in Madrid v. Bloomington Auto Co., 782 N.E.2d 386 (Ind. Ct. App. 2003), argued that they received all legal rights to the vehicle and were entitled to the issuance of a certificate of title. Schaumburg Audi filed a response to the Bakers' motion for summary judgment and also filed a cross-motion for summary judgment. Schaumburg Audi argued that: (1) Webb was Dr. Baker's agent and that Dr. Baker was the actual buyer of the vehicle from Schaumburg Audi; (2) Illinois law applied and the Bakers' claim failed

under Illinois law; and (3) it was entitled to treble damages. The Bakers also filed a motion for leave to file a supplemental complaint to add a claim for attorney fees as a result of Schaumburg Audi's "frivolous, unreasonable, or groundless" conversion claims as discussed in Schaumburg Audi's counterclaim and motion for summary judgment. Appellee's Appendix at 23. After a hearing, the trial court entered the following findings of fact and conclusions thereon regarding the summary judgment motions:

* * * * *

CONCLUSIONS

1. There is no genuine issue as to any material fact.
2. Indiana is the state with the "most significant relationship" to all parties and Indiana's substantive law applies, specifically Indiana Code 26-1-2-403(1) and (2) as follows:

"(1) A purchaser of goods acquires all title which his transferor had or had power to transfer . . . (2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business."

3. [The Bakers] were "buyers in ordinary course of business". Respondents Webb were "merchants", and Respondent Schaumburg Audi "entrusted" the possession of the vehicle to Respondent Webb as contained in Indiana Code section 26-1-2-403(2).

ORDERS/JUDGMENT

1. [The Bakers'] Motion for Summary Judgment (filed November 4, 2004) is GRANTED.
2. [] Schaumburg Audi's Motion for Summary Judgment (filed March 1, 2005) is DENIED.

* * * * *

Appellant's Appendix at 14-18. The trial court then denied the Bakers' motion for leave to file the supplemental complaint.

Our standard of review for a trial court's grant of a motion for summary judgment is well settled. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(c); Mangold ex rel. Mangold v. Ind. Dep't of Natural Res., 756 N.E.2d 970, 973 (Ind. 2001). All facts and reasonable inferences drawn from those facts are construed in favor of the nonmovant. Id. Our review of a summary judgment motion is limited to those materials designated to the trial court. Id. We must carefully review a decision on summary judgment to ensure that a party was not improperly denied its day in court. Id. at 974.

The fact that the parties made cross-motions for summary judgment does not alter our standard of review. Hartford Acc. & Indem. Co. v. Dana Corp., 690 N.E.2d 285, 291 (Ind. Ct. App. 1997), trans. denied. Instead, we must consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law. Id.

Where a trial court enters findings of fact and conclusions thereon in granting a motion for summary judgment, as the trial court did in this case, the entry of specific findings and conclusions does not alter the nature of our review. Rice v. Strunk, 670 N.E.2d 1280, 1283 (Ind. 1996). In the summary judgment context, we are not bound by the trial court's specific findings of fact and conclusions thereon. Id. They merely aid our review by providing us with a statement of reasons for the trial court's actions. Id.

I.

The first issue is whether the trial court erred when it determined that Indiana law applied to the litigation. Ordinarily a choice of law issue will be resolved only if it appears there is a difference in the laws of the potentially applicable jurisdictions. Allen v. Great American Reserve Ins. Co., 766 N.E.2d 1157, 1162 (Ind. 2002). Here, Schaumburg Audi and the Bakers advocate differing results under both Indiana and Illinois laws. Accordingly, we will address choice of law. See, e.g., id.

Indiana's choice of law rule for actions on contract calls for applying the law of the forum with the most intimate contacts to the facts.¹ Hartford Acc. & Indem. Co. v. Dana Corp., 690 N.E.2d 285, 291 (Ind. Ct. App. 1997), trans. denied. The court will consider all acts of the parties touching the transaction in relation to the several states involved and will apply as the law governing the transaction the law of that state with which the facts are in most intimate contact. Id. Indiana follows the approach formulated by the Restatement (Second) of Conflict of Laws. Id. The Restatement (Second) of Conflict of Laws § 188 provides:

¹ Indiana's choice of law rules for torts are discussed in Simon v. United States, 805 N.E.2d 798 (Ind. 2004). A tort is defined as:

A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some private obligation by which like damage accrues to the individual.

Irwin Mortg. Corp. v. Marion County Treasurer, 816 N.E.2d 439, 446 (Ind. Ct. App. 2004) (quoting Holtz v. Board of Comm'rs of Elkhart County, 560 N.E.2d 645, 647 (Ind. 1990)). We find that the choice of law rules for torts are inapplicable here because the Bakers' action is not independent of contract; rather,

- (1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in § 6.^{2]}
- (2) In the absence of an effective choice of law by the parties . . . , the contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
 - (a) the place of contracting,
 - (b) the place of negotiation of the contract,
 - (c) the place of performance,
 - (d) the location of the subject matter of the contract, and
 - (e) the domicil, residence, nationality, place of incorporation and place of business of the parties.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

See Dana Corp., 690 N.E.2d at 291 (discussing the Restatement (Second) of Conflicts §

188). We also note that the Restatement (Second) of Conflicts § 191 provides:

The validity of a contract for the sale of an interest in a chattel and the rights created thereby are determined, in the absence of an effective choice of law by the parties, by the local law of the state where under the terms of the contract the seller is to deliver the chattel unless, with respect to the particular issue, some other state has a more significant relationship under

the Bakers' action directly relates to their contract with Webb and Webb's performance of his duties under the contract.

² The Restatement (Second) of Conflicts, § 6 provides:

- (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
- (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
 - (a) the needs of the interstate and international systems,
 - (b) the relevant policies of the forum,
 - (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
 - (d) the protection of justified expectations,
 - (e) the basic policies underlying the particular field of law,
 - (f) certainty, predictability and uniformity of result, and
 - (g) ease in the determination and application of the law to be applied.

the principles stated in § 6 to the transaction and the parties, in which event the local law of the other state will be applied.

Schaumburg Audi argues that the trial court erred by finding that Indiana was the state with the “most significant relationship” to all parties and by finding that Indiana law applied. Appellant’s Appendix at 17. To review this issue, we must consider the factors outlined above. We note that Schaumburg Audi focuses upon facts relating to its agreement with Webb, while the Bakers focus upon facts relating to their agreement with Webb. The issue in this action is whether the Bakers received all rights and title to the vehicle from Webb. As a result, it would seem more appropriate to focus upon the Bakers’ agreement with Webb. However, we need not decide this issue because, even considering the facts of Webb’s agreement with Schaumburg Audi along with the facts of Webb’s agreement with the Bakers, we determine that the trial court did not err by finding that Indiana law applies.

The first and second factors are the place of contracting and negotiating. The comments to the Restatement provide that “the place of contracting is the place where occurred the last act necessary . . . to give the contract binding effect” and “[s]tanding alone, the place of contracting is a relatively insignificant contact.” Restatement (Second) of Conflicts § 188 cmt. e (1971). The comments also provide that “[t]he place where the parties negotiate and agree on the terms of their contract is a significant contact.” Id. The place of the contract and negotiation between Webb and the Bakers was Indiana, while the place of the contract and negotiation between Webb and Schaumburg Audi was Indiana and Illinois. Schaumburg Audi points out that Webb

contacted Schaumburg Audi about the vehicle, that Webb mailed the purchase price to Schaumburg Audi in Illinois, and that the vehicle was located in Illinois at the time of the negotiation of the contract.

As for the place of performance of the contract, the place of performance of the contract between Webb and the Bakers was Indiana. However, Webb bought the vehicle in Illinois, and Schaumburg Audi delivered the vehicle to Webb in Indiana, which is also an important factor under the Restatement (Second) of Conflicts § 191.

We next consider the location of the subject matter of the contract. The comments to the Restatement provide that “[w]hen the contract deals with a specific physical thing, . . . the location of the thing . . . is significant.” Restatement (Second) of Conflicts § 188 cmt. e (1971). The subject matter of the contract, the vehicle, was located in Illinois, delivered to Indiana, and is currently located in Indiana. Schaumburg Audi also argues that the certificate of title is located in Illinois.

Lastly, as for the “domicil, residence, nationality, place of incorporation and place of business of the parties,” the Bakers reside in Indiana, and Webb did business in Indiana, while Schaumburg Audi did business in Illinois. Restatement (Second) of Conflicts § 188 (1971).

While some of the factors are indeterminate, we consider the fact that Schaumburg Audi delivered the vehicle to Indiana and the fact that the Bakers had no contact with Illinois to be of considerable importance. Considering the totality of the circumstances, we conclude that the trial court did not err when it determined that Indiana had the most

significant relationship to all parties. See, e.g., American Employers Ins. Co. v. Coachmen Industries, Inc., 838 N.E.2d 1172, 1181 (Ind. Ct. App. 2005) (holding that Indiana law applied where none of the § 188 factors were compelling or conclusive but the overall number and quality of contacts favored Indiana over Texas); Dohm & Nelke, a div. of Cashin Systems Corp. v. Wilson Foods Corp., 531 N.E.2d 512, 514 (Ind. Ct. App. 1988) (holding that Indiana law applied where, although the final act of acceptance occurred in New York, which was the manufacturer's home office, negotiations and agreement by the purchaser occurred in Oklahoma, and the goods were shipped from the subsidiary's office in Missouri, the subject matter of the contract, the press, was located in Indiana and substantial performance by both parties of requirements of the contract was to occur in Indiana).

II.

Having determined that Indiana law applies, the next issue is whether the trial court erred when it determined that the Bakers were entitled to title and possession of the automobile. We are not writing on a clean slate regarding this issue. In Madrid v. Bloomington Auto Co., Inc., 782 N.E.2d 386, 395 (Ind. Ct. App. 2003), we held that legal title to a vehicle is governed by the sales provisions of the UCC rather than the Indiana Certificate of Title Act. Thus, we must examine the provisions of the UCC to determine whether the Bakers were entitled to title and possession of the automobile.

Indiana's UCC provisions provide: "Unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance

with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place” Ind. Code § 26-1-2-401(2). Further, under Ind. Code § 26-1-2-403:

- (1) A purchaser of goods acquires all title which his transferor had or had power to transfer, except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase, the purchaser has such power even though:
 - (a) the transferor was deceived as to the identity of the purchaser; or
 - (b) the delivery was in exchange for a check which is later dishonored; or
 - (c) it was agreed that the transaction was to be a “cash sale”; or
 - (d) the delivery was procured through fraud punishable as theft under the criminal law.
- (2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.
- (3) “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be theft under the criminal law.

* * * * *

We analyzed these UCC provisions under an almost identical context in Madrid. There, a Lincoln dealership drove a new Lincoln Navigator to a used car dealership so that the used car dealership could show the vehicle to a customer. Madrid, 782 N.E.2d at 389. Although the customer was supposed to purchase the vehicle directly from the Lincoln dealership, the used car dealer informed the customer that he had purchased the vehicle. Id. Thus, the customer paid the used car dealer the purchase price and the used

car dealer agreed to provide the certificate of title the next day. Id. The used car dealer never provided the customer with the certificate of title because the Lincoln dealer had retained possession of the certificate. Id.

The customer filed a complaint against the Lincoln dealer and the used car dealership requesting title to the vehicle. Id. at 390. The trial court granted summary judgment to the Lincoln dealer because it found that the Lincoln dealership preserved its ownership of the vehicle by retaining the certificate of origin pursuant to the Indiana Certificate of Title Act. Id.

We reversed, holding that the customer received legal title to the vehicle under the UCC provisions of Ind. Code §§ 26-1-2-401 and 26-1-2-403. Id. at 397. Specifically, we held that the used car dealership was a merchant dealing in goods of the same kind as the Lincoln dealer, that the Lincoln dealer entrusted the vehicle to the used car dealership, and that the customer was a buyer in the ordinary course of business. Id. at 395-397.

Further, we observed the policy behind Ind. Code § 26-1-2-403, which:

was intended to determine the priorities between the two innocent parties: (1) the original owner who parts with his goods through fraudulent conduct of another and (2) an innocent third party who gives value for the goods to the perpetrator of the fraud without knowledge of the fraud. By favoring the innocent third party, the Uniform Commercial Code endeavors to promote the flow of commerce by placing the burden of ascertaining and preventing fraudulent transactions on the one in the best position to prevent them, the original seller.

Id. at 397 (quoting Mowan v. Anweiler, 454 N.E.2d 436, 439 (Ind. Ct. App. 1983)). We noted that the policy behind the UCC was to favor the customer because, as between the customer and the Lincoln dealer, the Lincoln dealer was in the best position to prevent

the fraudulent transaction. Id. Consequently, we held that under Ind. Code § 26-1-2-403, when the Lincoln dealer entrusted the vehicle to the used car dealership, the used car dealership received the power to transfer all rights of the Lincoln dealer to the customer and the customer received legal title to the vehicle even though they did not receive the certificate of origin. Id.

Although Schaumburg Audi's arguments are not well delineated, we take Schaumburg Audi's arguments to mean that Webb was not a merchant dealing in goods of the same kind and that the Bakers were not buyers in the ordinary course of business. We will address each argument separately.

A. Merchant.

Under Ind. Code § 26-1-2-403, "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business." Thus, if Schaumburg Audi entrusted possession of the vehicle to a merchant who deals in goods of the same kind, the merchant could transfer all of Schaumburg Audi's rights to a buyer in the ordinary course of business. According to Schaumburg Audi, Webb should not be considered a merchant because: (1) Schaumburg Audi did not know that Webb was purchasing the automobile for resale; (2) Webb was acting as the agent for the Bakers and did not sell the vehicle to the Bakers; and (3) Webb did not have a sales lot.

The designated evidence shows that Schaumburg Audi was contacted about the vehicle by Ryan Webb. According to Schaumburg Audi, Webb did not inform

Schaumburg Audi that Webb was buying the vehicle for resale or that he was “acting as an agent in the purchase of the Automobile.” Appellant’s Appendix at 196. However, the designated evidence also demonstrated that Webb told the salesperson that he was the owner of Webb Auto, an automobile leasing company. The Bakers designated evidence that it “was widely known that Webb was in the business of selling automobiles,” and that they had previously purchased vehicles from Webb. Id. at 249. The Bakers purchased the vehicle by check directly from Webb. In an affidavit from Fred Webb, Webb stated that he, through Webb Auto Consulting and/or Mint Auto Sales, was involved in the sale and lease of automobiles and that “[p]rior to the transaction involving the Automobile in 2002, [he] had acted as an auto broker facilitating transactions between individual customers and Schaumburg Audi.” Id. at 227.

The designated evidence reveals that Schaumburg Audi was aware that it was selling the vehicle to Webb Auto, that Webb Auto had previously done business with Schaumburg Audi, and that Webb Auto was involved in selling and leasing automobiles. Schaumburg Audi designated no evidence that it was selling the vehicle directly to the Bakers or that Webb was simply the Bakers’ agent. We conclude that Webb Auto was working as a merchant dealing in goods of the same kind and that Schaumburg Audi entrusted the vehicle to Webb Auto. Consequently, the designated evidence demonstrated that Schaumburg Audi entrusted possession of the vehicle to a merchant who deals in goods of the same kind. See, e.g., Madrid, 782 N.E.2d at 396 (holding that the used car dealership was a merchant who dealt in the same kind of goods).

B. Buyers in the Ordinary Course of Business.

Schaumburg Audi also argues that the Bakers were not buyers in the ordinary course of business because Webb only rendered services to the Bakers and the UCC does not apply to services. Under Ind. Code § 26-1-1-201(9), a buyer in the ordinary course of business is:

a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course of business if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. . . .

The UCC applies to “transactions in goods,” and an agreement solely for the performance of services is not subject to the sales provisions of the UCC. Ind. Code § 26-1-2-102; Insul-Mark Midwest, Inc. v. Modern Materials, Inc., 612 N.E.2d 550, 553 (Ind. 1993). If the transaction is “mixed,” the court must determine whether it falls within the UCC, or falls outside of the code and is thus governed by the common law. Insul-Mark, 612 N.E.2d at 554. To make this determination, the Indiana Supreme Court has adopted the predominant thrust test. Id.

To determine whether the predominant thrust of a mixed contract is to provide services or goods, one first looks to the language of the contract in light of the situation of the parties and the surrounding circumstances. Specifically, one looks to the terms describing the performance required of the parties, and the words used to describe the relationship between the parties.

Beyond the contractual terms themselves, one looks to the circumstances of the parties, and the primary reason they entered into the contract. One also considers the final product the purchaser bargained to receive, and whether it may be described as a good or a service.

Finally, one examines the costs involved for the goods and services, and whether the purchaser was charged only for a good, or a price based on both goods and services. If the cost of the goods is but a small portion of the overall contract price, such fact would increase the likelihood that the services portion predominates.

Id. at 555 (internal citations omitted).

Here, the Bakers designated evidence that it “was widely known that Webb was in the business of selling automobiles,” and that they had previously purchased vehicles from Webb. Appellant’s Appendix at 249. The Bakers were unaware of where Webb obtained the vehicle. Webb purchased the vehicle from Schaumburg Audi for \$53,561.00, and the Bakers purchased the vehicle from Webb by checks totaling \$61,642.30. Schaumburg Audi designated no evidence that the Bakers were paying Webb only for his services or even that the services portion of the agreement was the predominant thrust. Thus, we conclude that the Bakers were buyers in the ordinary course of business. See, e.g., Madrid, 782 N.E.2d at 397 (holding that the customers were buyers in the ordinary course of business).

In summary, we conclude that Schaumburg Audi entrusted the vehicle to Webb Auto, which was a merchant dealing in goods of that kind, that Webb Auto had the power to transfer all rights of Schaumburg Audi to a buyer in the ordinary course of business, and that the Bakers were buyers in the ordinary course of business. Title of the vehicle passed to the Bakers despite the fact that Schaumburg Audi retained the certificate of title. See, e.g., Madrid, 782 N.E.2d at 397. The trial court did not err by granting the

Bakers' motion for summary judgment and by denying Schaumburg Audi's motion for summary judgment.³

III.

On cross appeal, the Bakers contend that the trial court abused its discretion by denying their motion to file a supplemental complaint. After the Bakers filed their verified petition for an order directing the BMV to issue a certificate of title, Schaumburg Audi filed a counterclaim in November 2004, alleging that the Bakers were knowingly and intentionally exerting unauthorized control over the vehicle and that it was entitled to treble damages, costs, and attorney fees for the conversion. The Bakers answered the counterclaim on December 2, 2004.⁴ The parties then filed motions for summary judgment, designations of evidence, and various memorandums. On March 30, 2005, the Bakers filed a motion for leave to file a supplemental complaint to add a claim for attorney fees as a result of Schaumburg Audi's "frivolous, unreasonable, or groundless" conversion claims as discussed in Schaumburg Audi's counterclaim and motion for summary judgment. Appellee's Appendix at 23. At this point, almost all of the various summary judgment memorandums and designated evidence had been filed with the trial court. A hearing was held on the motions for summary judgment on May 5, 2005, and

³ Schaumburg Audi also argues that the judgment in this case will permit the Bakers to receive a double recovery as a result of the restitution order in Webb's criminal case. Appellant's Brief at 14 n.1. Schaumburg Audi has failed to develop a cogent argument and has waived this argument on appeal. See, e.g., Olcott Intern. & Co. v. Micro Data Base Systems, Inc., 793 N.E.2d 1063, 1068 n. 1 (Ind. Ct. App. 2003), trans. denied; Ind. Appellate Rule 46(A)(8).

⁴ This answer is not included in either appellant's appendix or appellee's appendix.

after requesting additional evidence from the parties, the trial court entered its order granting summary judgment to the Bakers and denying Schaumburg Audi's motion for summary judgment. The trial court then denied the Bakers' motion for leave to file the supplemental complaint.

Under Ind. Trial Rule 15(D), “[u]pon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. . . .” A trial court has broad discretion in ruling on a motion under Ind. Trial Rule 15 because of its strategic advantage in balancing various trial considerations. Strodtman v. Integrity Builders, Inc., 668 N.E.2d 279, 284 (Ind. Ct. App. 1996), modified on reh’g on other grounds, trans. denied. On review, we generally affirm the trial court’s decision regarding a discretionary motion if there is any rational basis for the decision. Id. An abuse of discretion occurs when there is a conclusion or judgment that is clearly against logic and the natural inferences to be drawn therefrom, or a decision that contravenes reasonable, probable and actual deductions. Id.

Although the Bakers had been aware of Schaumburg Audi’s counterclaim for several months, the Bakers waited until the summary judgment process was almost complete to attempt to raise this claim against Schaumburg Audi. Under these circumstances, we cannot say that the trial court abused its discretion by denying the Bakers’ motion to file a supplemental complaint.

For the foregoing reasons, we affirm the trial court's grant of the Bakers' summary judgment, the denial of Schaumburg Audi's motion for summary judgment, and the denial of the Bakers' motion to file a supplemental complaint.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur